

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF ALABAMA

3 EASTERN DIVISION

4
5 CIVIL ACTION NUMBER

6 3:05-CV-0741-M

7
8 BARRY BUCKHANON and RODNEY FRALEY,

9 Plaintiffs,

10 vs.

11 HUFF & ASSOCIATES CONSTRUCTION COMPANY,
12 INC.,

13 Defendant.

14
15 DEPOSITION TESTIMONY OF:

16 RODNEY FRALEY

17
18
19 June 8, 2006

20 11:15 a.m.

21
22 COURT REPORTER:

23 Gwendolyn P. Timbie, CSR

COPY

EXHIBIT

tabbles
A.

1 Mr. Buckhanon and Mr. Langley?

2 A That's people that's on the
3 job or just --

4 Q Yeah.

5 A No. That's it. Just Brad
6 Connell.

7 Q What about people that weren't
8 on the job?

9 A Jerry Garrett.

10 Q Was Jerry Garrett ever
11 employed by Huff?

12 A No, sir.

13 Q He just gave y'all a lift to
14 pick up your checks?

15 A Yes, sir.

16 Q Is he a friend of yours?

17 A Yes, sir.

18 Q Did you ever pay Mr. Huff -- I
19 mean, Mr. Myers the money -- five dollars
20 back?

21 A No, sir.

22 Q Other than the instances we've
23 talked about, can you tell me any other

1 occasion where Mr. Myers used racial slurs
2 to you or in your presence?

3 A No, sir.

4 Q Have you ever been arrested?

5 A Yes, sir.

6 Q For what?

7 A Possession of marijuana.

8 Q When?

9 A Like, '98.

10 Q And how was that resolved?

11 A Probation.

12 Q Any jail time?

13 A No. No, sir.

14 Q Was that arrest here in
15 Tallassee?

16 A Elmore County.

17 Q How long was your probation?

18 A A year.

19 Q And you served that out?

20 A Yes, sir.

21 Q Any other arrest?

22 A Another -- all of them
23 possession of marijuana. 2001.

1 Q Who was your supervisor at --
2 what's the name of the place?

3 A Jacco.

4 Q Jacco?

5 A Yes, sir.

6 Q Do you remember your
7 supervisor's name?

8 A Michael Vick.

9 Q And do you have any set rate
10 of pay at Hilyer?

11 A Excuse me.

12 Q Go ahead.

13 A Jeff Vick. That's Jeff Vick.

14 Q Do you have any set rate of
15 pay when you do work for Hilyer?

16 A He just pays me a little -- a
17 little a day. You know, if sometimes I
18 work a long time, he'll pay me at the end
19 of the week.

20 Q Does Hilyer withhold any taxes
21 on your money?

22 A No, sir.

23 Q Any other employments since

1 you left Huff?

2 A That's it.

3 Q Did you graduate from high
4 school?

5 A No, sir.

6 Q Did you attend high school?

7 A I quit in the eleventh.

8 Q Tallassee?

9 A Yes, sir.

10 Q Any other education since
11 then?

12 A No, sir.

13 Q When did you quit the eleventh
14 grade? What year are we talking about
15 here?

16 A '93.

17 Q Now, as I understand it, you
18 went to work at Huff on or about June 1,
19 2004?

20 A Yes, sir.

21 Q Same day Mr. Buckhanon went?

22 A Yes, sir.

23 Q And as I understand it, the

1 two of you were told about some need up
2 there by Mr. Connell?

3 A Yes, sir.

4 Q Who did he talk to first, you
5 or Mr. Buckhanon?

6 A He talked to both of us at the
7 same time.

8 Q Where was this conversation?

9 A At Charles Hilyer's.

10 Q Does Connell work there too?

11 A No. He just come by.

12 Q Before you went to Huff, did
13 you work anywhere else other than Hilyer?

14 A Just besides with my brother.

15 Q Tell me if this is -- as I
16 understand it, Mr. Connell told you that
17 they had some need for some laborers up at
18 Huff --

19 A Yes, sir.

20 Q -- on this job in Auburn;
21 right?

22 A Yes, sir.

23 Q And the two of you rode up

1 there with Mr. Connell?

2 A Yes.

3 Q And did you speak with
4 Mr. Myers when you got there?

5 A Yes, sir. We sat in the
6 trailer, and we -- we talked in the
7 trailer.

8 Q Tell me what you remember
9 about talking with Mr. Myers.

10 A He was just asking all what
11 type of work have we done before, have we
12 ever done construction, you know, what
13 kind of skills we've got, all -- what can
14 we do.

15 Q And did you fill out any
16 paperwork?

17 A Application and tax papers.

18 Q Did you fill out any physical
19 health questionnaire?

20 A No, sir. Not that I can
21 remember.

22 Q So Mr. Myers hired you?

23 A Yes, sir.

1 Q As a what?

2 A Laborer.

3 Q Laborer? Okay. And how many
4 people were on that job site when you
5 started working there?

6 MR. BOWLES: Let me ask you
7 this: When you ask him that question, are
8 you just talking about employees of Huff
9 or --

10 MR. WILSON: Yeah. For now.

11 MR. BOWLES: -- including the
12 subs?

13 Q Well, let's take the total
14 number that you remember of everybody;
15 subs, Huff. I'm trying to get a feel for
16 how many people were doing work on that
17 site.

18 A I know it was probably about
19 thirty, thirty-five people.

20 Q And of those, do you have any
21 feel for how many of them are employed
22 directly by Huff, as Huff employees?

23 A I'll say about five or six

1 that's Huff employees that I could
2 remember.

3 Q And the rest of them were
4 subcontractors?

5 A Yes, sir.

6 Q Who do you remember was
7 working there as a Huff employee when you
8 started there other than Connell,
9 Buckhanon, and -- who else? Myers?

10 A Myers, me, and Buckhanon,
11 Connell, and James Langley and Bobby's
12 son. He would come by occasionally.

13 Q What's his name?

14 A Mark.

15 Q Tell me what you did in the
16 position of a laborer.

17 A We was cleaning up the bricks
18 around the whole building and just
19 carrying wood and stacking the wood up.
20 Just all kind of little stuff like that.

21 Q Were you assigned to anybody
22 in particular?

23 A Brad Connell.

1 Q He was a carpenter; right?

2 A Yes, sir.

3 Q Now, Mr. Buckhanon talked
4 about the project manager, Quinton, coming
5 around here and there. Do you remember
6 that?

7 A Yes, sir.

8 Q Did you know who he was?

9 A Yes, sir.

10 Q Did you know he was a project
11 manager?

12 A Yes, sir.

13 Q Did you understand that he was
14 Bobby Myers' superior?

15 A Yes, sir.

16 Q Do you remember Mr. Myers
17 picking you and Mr. Buckhanon up, taking
18 you to and from the job site?

19 A Yes, sir.

20 Q And how frequently did that
21 happen?

22 A It was -- out of two months,
23 it was probably a month that we went to

1 work with him.

2 Q Did he offer to pick you up
3 and bring you back?

4 A Yes, sir.

5 Q Did he take any other
6 employees to and from the job site?

7 A No, sir.

8 Q And Mr. Buckhanon told me he
9 got there about -- in the morning about
10 seven?

11 A Yes. Yes, sir.

12 Q And y'all had worked till what
13 time?

14 A Like, two to three-thirty.
15 Sometimes we worked till five.

16 Q Now, as I understand it, you
17 quit your job at Huff on or about July 27,
18 2004. True?

19 A Yes, sir.

20 Q So do you have any reason to
21 dispute that you worked there from about
22 June 1 to July 27, 2004? Does that sound
23 right to you?

1 A Yeah. Somewhere in there.

2 Q About eight weeks maybe?

3 A Yes, sir.

4 Q What is your recollection of
5 your initial rate of pay at Huff?

6 A Started off at, like, eight
7 fifty.

8 Q And then when you left what
9 was it?

10 A Nine dollars.

11 Q Do you recall Mr. Myers
12 raising your rate of pay?

13 A Yes, sir.

14 Q Did he talk to you and tell
15 you why he was raising you?

16 A It was because we had worked
17 over there, I think it was, like -- if we
18 worked, like, thirty days -- he told us in
19 thirty days he'd see how we worked and
20 performed, he would raise our pay.

21 Q When y'all went on the job
22 site on or about June 1, had you ever done
23 any work for Huff before that?

1 that required being up higher?

2 A Yes, sir.

3 Q Now, Mr. Fraley, you've made
4 the essentially identical claims in this
5 case as Mr. Buckhanon; right?

6 A Yes, sir.

7 Q And you, again, sat through
8 Mr. Buckhanon's deposition and heard his
9 testimony. True?

10 A Yes, sir.

11 Q Can you tell me about any
12 other instance where Mr. Myers used racial
13 slurs to you or in your presence other
14 than what Mr. Buckhanon talked about?

15 A The conversation in the
16 trailer, Mr. Myers, he said, y'all -- he
17 said, I'm not -- he said, y'all are --
18 y'all don't know nothing. Y'all niggers
19 don't know nothing. That's what he said.

20 Q All right. Are you through?
21 I didn't mean to cut you off.

22 A Oh, yes, sir. Yes, sir.

23 Q Who all was present for that

1 conversation in the trailer?

2 A It was me and Mr. Buckhanon
3 and James Langley and Bobby Myers.

4 Q Let me back up and ask you,
5 Mr. Buckhanon told me about an instance
6 where he heard Mr. Myers over the two-way
7 radio make a racial statement to Jimmy
8 Langley. Remember that?

9 A Yes, sir.

10 Q Now, did you hear him say
11 that?

12 A Yes, sir.

13 Q Were you standing there too?

14 A Yes, sir.

15 Q Does your recollection of what
16 was said vary from what Mr. Buckhanon said
17 here today?

18 A No, sir. It's the same.

19 Q So as we sit here today, you
20 can recall two occasions where Bobby Myers
21 made racial slurs in your presence?

22 A Yes, sir.

23 Q The time with the two-way

1 radio with Jimmy Langley?

2 A Yes, sir.

3 Q And then the time when the
4 four of y'all were eating in the trailer?

5 A Yes, sir.

6 Q And would Bobby Myers
7 typically eat lunch with y'all?

8 A Yes, sir.

9 Q When he was on the site?

10 A Yes, sir.

11 Q And what was your
12 understanding of who Mr. Myers was
13 referring to when he made the comment in
14 the trailer?

15 A He was referring to us.

16 Q Who is "us"?

17 A Me and Mr. Buckhanon. Because
18 when he was talking -- when he was saying
19 it, he was looking directly at me and
20 Mr. Buckhanon.

21 Q And when he says things like
22 you don't know anything or your kind don't
23 know anything, was there any specific task

1 or job that he was talking about that you
2 supposedly didn't know anything about
3 doing?

4 A Yes, sir.

5 Q What was it?

6 A We was putting the headers
7 above the doors, and we had to use the
8 nail guns. And I told Mr. Bobby, I said,
9 I don't know how to use the nail gun. He
10 told me to get up there anyway.

11 Q Had you never used a nail gun
12 with your brother?

13 A No, sir.

14 Q Or on the Huff job site?

15 A No, sir.

16 Q Were you able to use it?

17 A Yes, sir.

18 Q Were you able to get that task
19 done, with the nail gun?

20 A No, sir. Not by myself.

21 Q Who helped you?

22 A Brad Connell.

23 Q Are you aware -- well, did you

1 witness any other -- Mr. Myers using any
2 other racial slurs or derogatory terms
3 other than those two instances we talked
4 about?

5 A No, sir.

6 Q The Hispanics on the job site,
7 Mr. Buckhanon told me he remembered two.

8 A Yes, sir.

9 Q Is that consistent with your
10 recollection?

11 A Yes, sir.

12 Q Do you know their names?

13 A No, sir.

14 Q Do you know where they are?

15 A Lowndes -- Lowndes County is
16 the only thing I can remember where they
17 said they was from.

18 Q They said they were from
19 Lowndes County?

20 A Yes, sir.

21 Q Did you ever hear Mr. Myers
22 use racially derogatory terms toward the
23 Hispanic workers?

1 A No, sir.

2 Q Now, we've heard that
3 Mr. Myers would cuss and kind of get in
4 people's faces about getting things done;
5 right?

6 A Yes, sir.

7 Q Would he do that to all the
8 employees, black or white?

9 A Yes, sir.

10 Q Did you ever tell Mr. Myers --
11 or did you ever make any statement to
12 Mr. Myers to the effect that you didn't
13 appreciate his behavior or his language?

14 A No, sir.

15 Q Did you ever make any
16 complaint to Quinton, the project manager?

17 A No, sir.

18 Q Did you ever consider doing --
19 complaining to Mr. Myers or Mr. Quinton?

20 A No, sir.

21 Q Did you ever see Mr. John Huff
22 on the job site?

23 A Yes, sir.

1 Q Yes, sir. Your statement says
2 you quit your job with Huff on or about
3 July 27 --

4 A Yes, sir.

5 Q -- 2004.

6 A Yes, sir.

7 Q Is that true?

8 A Yes, sir.

9 Q Tell me how that came about
10 and who you talked to and -- I mean, how
11 did you quit? Why did you quit and how
12 did you quit?

13 A Well, I quit because I just --
14 I didn't want to deal with Mr. Myers
15 anymore just talking to me any kind of
16 way. And I just decided to quit because I
17 didn't want to go back and go hearing that
18 fuss every day.

19 Q Who did you tell -- did you
20 tell anybody you were quitting?

21 A No, sir.

22 Q Did you just walk -- leave the
23 job and not come back?

1 A Yes, sir.

2 Q Did you go back ever to
3 collect a paycheck or anything like that?

4 A Yes, sir.

5 Q Did you go back with
6 Mr. Buckhanon to get your paycheck?

7 A Yes, sir.

8 Q Tell me about that. Did you
9 see Mr. Myers on that day?

10 A We got there. It was -- if I
11 can go back. The week before we got our
12 check, that's when we got the five dollars
13 from Mr. Myers. And that evening we come
14 by the bank. And we told Mr. Myers, said,
15 you can stop right here and we'll pay you
16 your five dollars. He said he don't fool
17 with that bank, you know. Just don't go
18 out and spend all your money on drugs.
19 Just have my five dollars.

20 Then when we got our check,
21 Mr. Myers and James Langley, they was
22 leaving. And we pulled up and got out of
23 the truck. We asked Mr. Myers for our

1 A No, sir.

2 Q Ever?

3 A No, sir.

4 Q Ever seen him around town?

5 A I seen him, like, one or two
6 times, but I didn't say nothing to him.

7 Q Can you tell me the names of
8 any other persons who could speak to
9 Mr. Myers -- first of all, speak to
10 Mr. Myers use of racial slurs on the job
11 site? Other than Mr. Buckhanon and Jimmy
12 Langley, can you tell me of any other --
13 any other names of any other people that
14 could speak to that?

15 A No, sir.

16 Q All right. Let me broaden the
17 question. Other than Mr. Buckhanon,
18 Mr. Langley, and Mr. Connell, can you tell
19 me the names of any other people who could
20 speak to the nature of Mr. Myers' language
21 and behavior on the job site?

22 A Brad Connell.

23 Q Anybody other than him and

1 where Mr. McDade lives?

2 A Not right now I don't.

3 Q Mr. Connell -- if I remember
4 Mr. Buckhanon right, he said Mr. Connell
5 actually left Huff employment before y'all
6 did?

7 A Yes, sir.

8 Q And why did he leave?

9 A Because him and Bobby
10 constantly arguing every day.

11 Q About what?

12 A Just stuff that Mr. Myers
13 would say towards him. He'd call him
14 stupid, he don't know nothing, just all
15 kinds of stuff like that.

16 Q Anybody else quit while you
17 were there because of Mr. Myers?

18 A Not that I recall.

19 Q Did Mr. Myers fire anybody
20 else while you were there?

21 A Not as I can recall right now.

22 Q As I understand it from
23 Mr. Buckhanon, Mr. Myers told you that

1 Mr. Buckhanon had been fired?

2 A Yes.

3 Q Tell me what he told you about
4 that.

5 A Us -- we was going --
6 Mr. Myers picked me up. And I asked him
7 one day, I said, you're not going to stop
8 and get Barry? He said, no, sir. Don't
9 worry about Barry. Barry is fired. So I
10 went to work that day. When I got home, I
11 went by Mr. Buckhanon's house, and I told
12 him that Mr. Myers said he was fired.

13 Q Did Mr. Myers say anything
14 else to you about firing Mr. Buckhanon?

15 A No, sir.

16 Q As I understand it, you quit
17 the next day. Does that sound right to
18 you?

19 A I can't recall that.

20 Q Well, I'm getting that from
21 these charges that you guys filed with the
22 EEOC. Mr. Buckhanon's statement says that
23 he was terminated on July 26, 2004, and

1 your statement says, I quit my job on July
2 27, 2004. Does that sound right?

3 A Yes.

4 Q So the day that Mr. Huff --
5 Mr. Myers -- the day that Mr. Myers picked
6 you up and told you that he had let
7 Mr. Buckhanon go, in fact, was your last
8 day?

9 A I think so.

10 Q You do not think so?

11 A I said I do.

12 Q That's fine. Did Mr. Myers
13 show up to pick you up the day after you
14 quit?

15 A Yes, sir.

16 Q And what did you tell him?

17 A I didn't go outside. Just
18 stayed in the house.

19 Q And he didn't come back after
20 that, did he?

21 A No, sir.

22 Q That's all I have. Thank you
23 for your time.